

Internal Revenue Service

Department of the Treasury

District  
Director

Date: JUN 13 1985

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Gentlemen:

We have considered your application for tax exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence reveals that you were incorporated [REDACTED] as a nonprofit, [REDACTED] corporation in the State of [REDACTED].

The purposes for which the corporation is formed are as follows:

"The corporation is organized for all purposes permitted under Title [REDACTED]."

The corporation's activities consist of providing "exhibition space in the [REDACTED] to its members as well as exhibition space for shows which are an integral part of its public art education program." The application further states that, "plans are underway for the annual art auction in which each artist may exhibit his or her own works to be auctioned to the public." Artists who sell works at exhibits or auctions must be members of the organization, a privilege for which they, "are assessed dues". Member artists "donate between [REDACTED] to [REDACTED] of money received for works auctioned at the annual auction."

A further analysis of the organization's application reveals that the board of directors has sole discretion as to which artists are allowed to become members and are extended the opportunity to participate in exhibits and auctions.

An examination of furnished financial statements for years ended [REDACTED] and [REDACTED] reveals that approximately [REDACTED] of gross receipts was derived in each year from sales and auctions of art. An analysis of the [REDACTED] auction proceeds indicates that approximately [REDACTED] of the proceeds were remitted to member artists with [REDACTED] of the proceeds being retained by the organization.

Section 501(c)(3) of the Code provides for exemption from Federal income tax of organization organized and operated for exclusively educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code may qualify under this section.

Revenue Ruling 66-178, 1966-1 C.B. 138 holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

Revenue Ruling 71-395, 1971-2 C.B. 228, on the other hand holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify under section 501(c)(3) of the Code.

Revenue Ruling 76-152, 1976-1 C.B. 151, states that a non profit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary charges and not sufficient to cover the cost of operating the gallery does not qualify for exemption under section 501(c)(3) of the Code.

As in the case in Rev. Rul. 71-395, the artist-members of your organization are being directly benefitted by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale. Since the majority of all sales proceeds are turned over to the individual artists, such direct benefits are substantial by any measure and the organization's provisions of them cannot be dismissed as being merely incidental to its other purposes and activities. Accordingly, your organization is not operated for exclusively educational purposes and thus does not qualify for exemption under section 501(c)(3) of the Code. In addition, your purposes as stated in your organizing document are not limited to those described in section 501(c)(3) of the Code and therefore you are not organized exclusively for such purposes.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1630, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination you may protest in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completions.

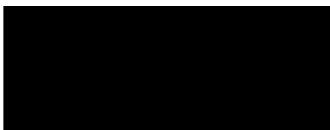
If we do hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Very truly yours,

District Director

cc:



Enclosure: Publication 892